

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIACIVIL CASE INFORMATION STATEMENT
(Civil Cases Other than Domestic Relations)

I. CASE STYLE:

Case No. 18-C-488

Plaintiff(s)

Judge: RUC

MARY KINSLEY

vs.

Defendant(s)

Days to
Answer

Type of Service

WEST VIRGINIA UNIVERSITY ALUMNI

30

Secretary of State

Name

ASSOCIATION, INC.

Street Address

City, State, Zip Code

II. TYPE OF CASE:

- | | |
|--|---|
| <input type="checkbox"/> General Civil | <input type="checkbox"/> Adoption |
| <input type="checkbox"/> Mass Litigation [As defined in T.C.R. 26.04(a)] | <input type="checkbox"/> Administrative Agency Appeal |
| <input type="checkbox"/> Asbestos | <input type="checkbox"/> Civil Appeal from Magistrate Court |
| <input type="checkbox"/> FELA Asbestos | <input type="checkbox"/> Miscellaneous Civil Petition |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Mental Hygiene |
| <input type="checkbox"/> Habeas Corpus/Other Extraordinary Writ | <input type="checkbox"/> Guardianship |
| <input checked="" type="checkbox"/> Other: Employment | <input type="checkbox"/> Medical Malpractice |

III. JURY DEMAND: ☒ Yes ☐ No CASE WILL BE READY FOR TRIAL BY (Month/Year): 12 / 2019IV. DO YOU OR ANY
OF YOUR CLIENTS
OR WITNESSES
IN THIS CASE
REQUIRE SPECIAL
ACCOMMODATIONS?☐ Yes ☒ No

IF YES, PLEASE SPECIFY:

- | | |
|--|---|
| <input type="checkbox"/> Wheelchair accessible hearing room and other facilities | FILED
DEC 19 2018
JEAN FRIEND, CLERK |
| <input type="checkbox"/> Reader or other auxiliary aid for the visually impaired | |
| <input type="checkbox"/> Interpreter or other auxiliary aid for the deaf and hard of hearing | |
| <input type="checkbox"/> Spokesperson or other auxiliary aid for the speech impaired | |
| <input type="checkbox"/> Foreign language interpreter-specify language: _____ | |
| <input type="checkbox"/> Other: _____ | |

Attorney Name: John-Mark AtkinsonFirm: ATKINSON & POLAK, PLLCAddress: P.O. Box 549, Charleston, WV 25322-0549Telephone: (304) 346-5100

Representing:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Plaintiff | <input type="checkbox"/> Defendant |
| <input type="checkbox"/> Cross-Defendant | <input type="checkbox"/> Cross-Complainant |
| <input type="checkbox"/> 3rd-Party Plaintiff | <input type="checkbox"/> 3rd-Party Defendant |

☐ Proceeding Without an AttorneyOriginal and 4 copies of complaint enclosed/attached.Dated: 12 / 17 / 2018Signature: [Signature]

A TRUE COPY

ATTEST: [Signature] CLERK
MONONGALIA COUNTY CIRCUIT COURT

SCA-C-100: Civil Case Information Statement (Other than Domestic Relations)

Rev

EXHIBIT

A

Plaintiff: MARY KINSLEY, et al Case Number: _____

vs.

Defendant: WEST VIRGINIA UNIVERSITY ALUMNI, et al

**CIVIL CASE INFORMATION STATEMENT
DEFENDANT(S) CONTINUATION PAGE**

WEST VIRGINIA UNIVERSITY

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: 20Type of Service: Personal

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

Defendant's Name

Street Address

City, State, Zip Code

Days to Answer: _____

Type of Service: _____

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

MARY KINSLEY,

Plaintiff,

v.

CIVIL ACTION NO.: 18-C-488

WEST VIRGINIA UNIVERSITY
ALUMNI ASSOCIATION, INC.,
a West Virginia corporation; and
WEST VIRGINIA UNIVERSITY,
a public university of West Virginia;

Defendants.

COMPLAINT

1. The plaintiff, Mary Kinsley, brings this action against the defendants for their discriminatory actions against the plaintiff.

PARTIES

2. The plaintiff, Mary Kinsley, was at all times relevant herein, a resident of Monongalia County, West Virginia.

3. The defendant, West Virginia University Alumni Association, Inc., is a West Virginia corporation and at all times relevant herein was doing business in Monongalia County, West Virginia.

4. The defendant, West Virginia University is, at all times relevant herein a state institution of higher education, created by West Virginia statute and governed by a

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statutorily created Board of Governors and is located in Monongalia County, West Virginia.

FACTS

5. The plaintiff, Mary Kinsley, was employed by the defendants for approximately twenty-seven years.

6. Since 2009, the plaintiff was employed by the defendants as the Facilities Director at the Erickson Alumni Center.

7. The plaintiff is 55 years old.

8. During her employment, Mary Kinsley consistently performed her duties in a satisfactory manner and met the reasonable expectations of her employers.

9. On or about February 10, 2017, the plaintiff's mother, who had previously been diagnosed with dementia, suffered a stroke.

10. On or about February 13, 2017 the plaintiff filed for FMLA benefits as a result of her mother's health condition.

11. On or about February 13, 2017, the plaintiff gave Kevin Berry, the Associate Director of the West Virginia University Alumni Association, a copy of the FMLA request and expressed concern that no steps were in place to relieve her of her duties if she needed to take time off.

12. On or about February 23, 2017, the plaintiff's request for FMLA leave was approved.

13. On or about March 2, 2017, the defendants notified the plaintiff of their willful, malicious and unlawful decision to terminate the plaintiff's employment effective June 30, 2017.

14. On or about March 10, 2017, Wendy Beaver was assigned as Interim Director of the Erickson Alumni Center.

15. Wendy Beaver was not as qualified to fill that position as the plaintiff.

16. Ms. Beaver had no prior work experience with the West Virginia University Alumni Association.

17. On or about May 21, 2017, the plaintiff applied for the General Manager position at the Erickson Alumni Center.

18. Todd Gauer was hired to fill that position.

19. Todd Gauer was not as qualified to fill that position as the plaintiff.

20. Mr. Gauer had no prior work experience with the West Virginia University Alumni Association.

21. On or about October 8, 2017, the plaintiff applied for the Project Account Coordinator position for The Erickson Alumni Center.

22. This position was filled by Katie O'Connor.

23. Katie O'Connor is twenty-eight years old and was not as qualified to fill that position as the plaintiff.

24. The main responsibility of the Project Account Coordinator position for the Erickson Alumni Center is to utilize the Kinetic Software to manage and track all billing and catering orders for The Erickson Alumni Center.

25. Ms. O'Connor had no experience using the Kinetic Software at the time of her hire and had to be trained on it.

26. The plaintiff implemented Kinetics at the Erickson Alumni Center more than four years prior to her termination and trained other employees at the Erickson Alumni Center who utilized the software on its use.

27. Between May 2017 and August 2018, Plaintiff also applied for twenty-five positions within West Virginia University and was not selected for any of them.

FIRST CAUSE OF ACTION

28. The defendants' actions constitute an unlawful retaliatory discharge motivated, in whole or in part, by the plaintiff's attempt to receive FMLA benefits, in violation of 29 U.S. Code § 2615.

29. As a direct and proximate result of the defendants' actions, plaintiff has suffered, and will continue to suffer, lost wages and benefits including interest pursuant to 29 U.S. Code § 2617 (a)(1).

30. As a direct and proximate result of the defendants' actions, plaintiff is entitled to liquidated damages equal to the sum of her lost wages and benefits pursuant to 29 U.S. Code § 2617 (a)(1).

31. The defendants' actions were not in good faith and entitle the plaintiff to attorney fees and costs pursuant to 29 U.S. Code § 2617 (a)(3).

SECOND CAUSE OF ACTION

32. Defendants' failure to hire Plaintiff as the General Manager at the Erickson Alumni Center and as the Project Account Coordinator for the Erickson Alumni Center was based upon, in whole or in part, the plaintiff's attempt to receive FMLA benefits in violation of 29 U.S. Code § 2615.

33. As a direct and proximate result of the defendants' actions, plaintiff has suffered, and will continue to suffer, lost wages and benefits including interest pursuant to 29 U.S. Code § 2617 (a)(1).

34. As a direct and proximate result of the defendants' actions, plaintiff is entitled to liquidated damages equal to the sum of her lost wages and benefits pursuant to 29 U.S. Code § 2617 (a)(1).

35. The defendants' actions were not in good faith and entitle the plaintiff to attorney fees and costs pursuant to 29 U.S. Code § 2617 (a)(3).

THIRD CAUSE OF ACTION

36. Defendants' failure to hire Plaintiff as the Project Account Coordinator for the Erickson Alumni Center was based upon, in whole or in part, Plaintiff's age, in violation of the West Virginia Human Rights Act, West Virginia Code §5-11-9. (Separate causes of action).

37. As a direct and proximate result of the defendants' aforesaid actions, Plaintiff has suffered, and will continue to suffer, lost wages and benefits in an amount to be proven at trial.

38. As a direct and proximate result of the defendants' aforesaid actions, Plaintiff is entitled to damages for indignity, embarrassment, humiliation, annoyance and inconvenience in an amount to be determined by the jury.

39. Defendants' actions were willful, wanton, malicious and/or undertaken with reckless disregard and/or reckless indifference to the rights of the Plaintiff entitling the Plaintiff to punitive damages in an amount to be determined by the jury.

40. The defendants' actions were willful and malicious and violated the West Virginia Human Rights Act entitling the plaintiff to attorney fees and costs pursuant to West Virginia Code §5-11-13 and/or the decisions of the West Virginia Supreme Court of Appeals.

PRAYER FOR RELIEF


WHEREFORE, plaintiff prays for the following relief:

1. Damages set forth in this Complaint, including lost wages and benefits, back pay, front pay, liquidated damages, damages for indignity, embarrassment, humiliation, annoyance and inconvenience and punitive damages in an amount to be determined by the jury;
2. Prejudgment interest as provided by law;
3. Attorney fees and costs; and
4. Such further relief as this court may deem just and equitable.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES TRIABLE TO A JURY.

MARY KINSLEY

By Counsel



Mark A. Atkinson (WVSB #184)

John-Mark Atkinson (WVSB #12014)

ATKINSON & POLAK, PLLC

P.O. Box 549

Charleston, WV 25322-0549

(304) 346-5100

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305



Mac Warner
Secretary of State
State of West Virginia
Phone: 304-558-6000
886-767-8683
Visit us online:
www.wvso.com

Jean Friend
Monongalia County Courthouse
75 HIGH STREET, SUITE 12
Morgantown, WV 26505-5427

Control Number: 232220

Defendant: WEST VIRGINIA UNIVERSITY
ALUMNI ASSOCIATION, INC.
PO BOX 4269
MORGANTOWN, WV 26504 US

Agent: KEVIN BERRY

County: Monongalia

Civil Action: 18-C-488

Certified Number: 92148901125134100002454705

Service Date: 1/3/2019

☐ I am enclosing:

1 summons and complaint

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your corporation as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, not to the Secretary of State's office.

Sincerely,

Mac Warner

Mac Warner
Secretary of State

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JAN 10 2019

JEAN FRIEND, CLERK

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

MARY KINSLEY,

Plaintiff,

v.

CIVIL ACTION NO.: 18-C-488

WEST VIRGINIA UNIVERSITY
ALUMNI ASSOCIATION, INC.,
a West Virginia corporation; and
WEST VIRGINIA UNIVERSITY,
a public university of West Virginia;

Defendants.

2019 JAN -3 P 2:35
CLERK OF THE COURT
STATE OF WEST VIRGINIA

S U M M O N S

TO THE ABOVE NAMED DEFENDANT:

**WEST VIRGINIA UNIVERSITY
ALUMNI ASSOCIATION, INC.
c/o Kevin Berry
P.O. Box 4269
Morgantown, WV 26504**

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Mark A. Atkinson and John-Mark Atkinson, plaintiff's attorneys, whose address is Post Office Box 549, Charleston, West Virginia, 25322-0549, an answer, including any related counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true and exact copy of which is herewith delivered to you. You are required to serve your answer within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: Dec 19, 2018

Jean Freund
Clerk of the Court

Susan Howbridge
Deputy Clerk

Civil Action Number 18-C-488
Package Identification Code 92148901125134100002454705
Signature Downloaded 1/14/2019 1:48:27 PM
Defendant Name WEST VIRGINIA UNIVERSITY ALUMNI ASSOCIATION,
INC.



Date Produced: 01/14/2019

WEST VIRGINIA SECRETARY OF STATE:

The following is the delivery information for Certified Mail™/RRE item number 9214 8901 1251 3410 0002 4547 05. Our records indicate that this item was delivered on 01/08/2019 at 08:59 a.m. in MORGANTOWN, WV 26505. The scanned image of the recipient information is provided below.

Signature of Recipient :

Jane Bowers
Jane Bowers

Address of Recipient :

4269

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: 245470

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

MARY KINSLEY,

Plaintiff,

v.

CIVIL ACTION NO.: 18-C-488

WEST VIRGINIA UNIVERSITY
ALUMNI ASSOCIATION, INC.,
a West Virginia corporation; and
WEST VIRGINIA UNIVERSITY,
a public university of West Virginia;

Defendants.

AFFIDAVIT FOR RETURN OF SERVICE

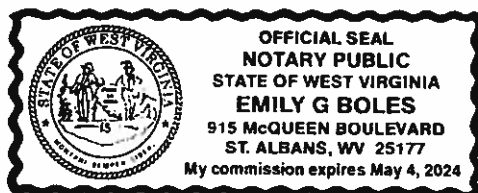
Arthur A. Brown, Jr., a credible person over the age of eighteen (18) years, after being duly sworn on his oath, says that he served the Summons and Complaint on West Virginia University by hand-delivering a true copy to The Office of General Counsel on January 4, 2019, in Morgantown, Monongalia County, West Virginia

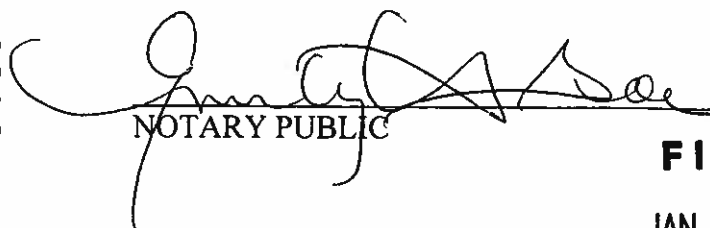

ARTHUR A. BROWN, JR.

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA

The foregoing instrument was acknowledged before me this 7th day of January, 2019, by Arthur A. Brown, Jr.
My commission expires: May 4, 2024




NOTARY PUBLIC

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JAN 10 2019

JEAN FRIEND, CLERK

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

MARY KINSLEY,

Plaintiff,

v.

CIVIL ACTION NO.: 18-C-488

WEST VIRGINIA UNIVERSITY
ALUMNI ASSOCIATION, INC.,
a West Virginia corporation; and
WEST VIRGINIA UNIVERSITY,
a public university of West Virginia;

Defendants.

S U M M O N S

TO THE ABOVE NAMED DEFENDANT:

**WEST VIRGINIA UNIVERSITY
c/o Dr. E. Gordon Gee
President of West Virginia
University
Office of the President
P.O. Box 6201
Morgantown, WV 26506-6201**

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon Mark A. Atkinson and John-Mark Atkinson, plaintiff's attorneys, whose address is Post Office Box 549, Charleston, West Virginia, 25322-0549, an answer, including any related counterclaim you may have, to the Complaint filed against you in the above-styled civil action, a true and exact copy of which is herewith delivered to you. You are required to serve your answer within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred for asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

Dated: Dec. 19, 2018

Jean Freund
Clerk of the Court

Susan Howbridge
Deputy Clerk